

MINUTES

RILEY COUNTY PLANNING BOARD

**Monday, February 9, 2004
7:30 p.m.**

**Courthouse Plaza East
Commission Meeting Room**

Members Present: Jon Larson - Chair
Buck Gehrt - Vice Chair
Lorn Clement
Rebecca Mosier
Dr. Tom Taul

Staff Present: Monty Wedel - Planning Director; Bob Isaac - Planner; Sherie Taylor - Administrative Assistant; Tim Rongish – Planning Intern; Stan Morgan – County Counselor.

Others Present: Tom and Donna White; Alan Clark; Kathryn Mayes; Kitty Pursley; Darlene Wilds; Kent & Rose Bacon; Sue & Pete Cohen; Danielle Zeigler; Latane and Dan Donelin; Dick & Martha Seaton; Virgil & Mary Jo Huseman; Ron Klataske; Jim Eisen; and Wayne Hoffman.

The minutes of the January 12, 2004 meeting were approved as presented.

As instructed by the Planning Board, the minutes of the January were prepared for the special meeting held on January 26, 2004, in more detail. Monty Wedel presented the two different style formats: Option 1, a detailed account of the meeting in script form and Option 2, a bullet list summarizing the high points of the meeting. Mr. Wedel wanted to know which of the two formats the Board preferred as a record of this discussion item. Tom Taul asked that it be noted in the minutes that the Board is aware that they are attempting to write regulations for the entire county, not just the particular request that is expected to be submitted for the British Pasture.

Becky Mosier considered Option 2 to be adequate. Lorn Clement commented that Option 1 and Option 2 covered different topics. Clement felt it was important to know who had made each comment, so he preferred Option 1. However, he also thought that the summary of the major issues was important as well. It was decided to combine both format options to create one blended set of minutes that would state the individual comments, while providing a bulleted overview as a summary. It was also decided that the minutes for this meeting shall be composed by utilizing the blended format.

The Report of Fees for the month of January 2004 was approved. The fees collected in January totaled \$650.00.

Discussion of draft amendment to Zoning Regulations regarding commercial and noncommercial wind energy conversion systems

Monty Wedel projected the draft regulations on the overhead screen for the public and the Planning Board. He stated that he wanted to briefly review the suggested changes from the previous meetings up to the point where the Board left off at the January 26 meeting. Mr. Wedel stated that whatever point in the draft regulations that the Board reaches tonight will be taken to the Board of County Commissioners in order to get feedback on the draft.

Wedel reviewed the following from each section:

Section 2 - Definitions – Wedel reviewed definitions for non-commercial and commercial wind energy conversion systems and the definition for the total height.

Section 8 – G Zone Regulations – Wedel clarified that non-commercial wind conversion systems were subject to conditions.

Section 22B – Special Uses – Wedel clarified that this is a new category that will be added to the Zoning Regulations. He also explained why the wind energy conversion systems are special uses instead of conditional uses.

Application Requirements, Item 2 - Wedel then reviewed the application requirements under Wind Energy Conversion Systems, Commercial (WECS-C). Following the educational seminar at Pottorf Hall, Commissioner Kearns asked Wedel to require more financial data about an applicant in order to have some assurance that the prospective applicant will have the financial stability to complete a project. Wedel said that the requirements will require specific references from other WECS projects, and a description and complete financial statement of the owner, including audits or reviews, whichever are applicable for the last three (3) years, if publicly available. The wording “the company’s financial condition” was added under Item 2 of the requirements.

Dick Seaton asked if the owner and the developer could be different.

Wedel said yes.

Ron Klataske asked what would happen if the developer defaulted before the potential owner took over.

Rose Bacon stated that she had read a report on a project in Illinois where this exact situation occurred.

Wedel asked Orion to state their objections to having financial statements.

Jim Eisen stated that once construction begins, whoever is financially responsible for the project should provide financial information to the County.

Wayne Hoffman said if Orion were the owner, developer and operator, they would comply with the financial requirements. If they were the developer only, they wouldn't comply.

Dick Seaton said the point was that there was the possibility of two different situations and that is why the requirement should apply to both the developer and the owner.

Hoffman said there is no risk to the County if the developer goes belly up.

Jim Eisen said a developer of any commercial type construction activity could default on a project, not just a wind turbine project.

Wedel said he felt the problem was with the expected owner, meaning someone could construct the project and then sell it to someone else, which would create a problem.

Jon Larson said there needs to be something in the regulations to clarify that when any construction begins, the financial information must be provided at that time.

Ken Bacon has seen contracts with different wind developers and stated that when the LLC's sign the leases to another corporation, the language in the contracts states that the LCC is no longer obligated to that contract. He wanted to know what would guarantee that a new owner will honor the original contract.

Lorn Clement said any attorney will tell you to keep everyone on the hook.

Seaton did not see what the problem was with seeing the financial statement of the developer.

Wedel said Jim Eisen had raised concerns with that being private information. Wedel asked if putting owner and/or developer would help and also adding "publicly available". Someone made the comment that it would not be "publicly available".

Seaton said if the County is looking out for the County as a whole, he doesn't understand why the County wouldn't want as much information as possible about the people involved in the project in order to protect the County.

Wedel asked if adding "the company's financial condition" along with the name, address and phone number requirement. Everyone agreed.

Tom Taul suggested leaving out "publicly available", because if the County needs to know such information, it shouldn't matter if it's publicly available.

Application Requirements – Item 7c – Wedel explained that scenic parkways would be removed and prairie parkways could be inserted. He discovered that prairie parkway is a stretch of highway that starts in northern Riley County, then swings east into Pottawatomie County and comes back through the City of Manhattan and continues south down K-177 to Council Grove. Mr. Wedel explained that Prairie Parkway is a name given by State statute and does not have the same connotation as a scenic byway, due to the lack of government funding. Wedel said a

prairie parkway can have scenic qualities, but it is not equal to scenic byways or scenic overlook due to classification and specific criteria.

Ron Klataske read an excerpt from a paper distributed by the Chamber of Commerce under the Visitor and Tourism Division that states that, "according to the CVB director, Becky Blake, the economic impact of tourism on the area is approximately \$70 million annually." Later in the article, it states that, "CVB will continue it's efforts to encourage development of a Tall Grass Prairie and Visitor's Center and the restoration of the Union Pacific depot as a tourist center. The purpose of the center is to attract and educate visitors of the Flint Hills region in regards to the ecological, geographic and historical significance of a tall grass prairie and to provide visitors with information to enhance their stay in the Flint Hills region." Mr. Klataske stated that a week ago, the governor announced that they will initiate an effort to try to acquire privately held land, which is held by the National Park Trust into a Tall Grass Prairie Preserve. Klataske then reviewed a letter written by Becky Blake to Deborah Devine regarding sign placement along the Prairie Parkway. The letter states that the highway from Marysville to Cassoday was named one of the top two-hundred most scenic routes in the U.S. by the National Geographic Society and was also named one of the most scenic drives in America by Reader's Digest.

Lorn Clement felt that I-70 should be added also. He stated that the intention of the regulation is to protect scenic routes and that I-70, highly traveled, is where most people form their impressions about this part of Kansas and the Flint Hills as they travel across the state.

Tom White wanted to know who owns the view. He stated that he could not understand how the Board thinks they can regulate a view.

Wayne Hoffman said he was confused as to why such an issue is being made out of placing Prairie Parkway or I-70 in Section 7(c), when Section 7(b) requires the submittal of visual simulations in 12 locations and it's guaranteed that both locations will be included.

Bob Isaac concurred with Hoffman. Mr. Isaac reminded the Board that this particular section is regarding including a visual simulation from a particular location as part of the required environmental assessment, not whether or not the wind farm should be built near a scenic highway.

Dan Donelin asked who does the visual simulation for an application.

Wedel said the applicant is responsible.

Application Requirements – Item 9e – Wedel stated that to measure noise levels, the wording, "sound levels utilizing the "A-" and "C-weighted" scales, both at the residence nearest to the project boundary and at the property line" was added. Bob Isaac briefly alluded to the four-page report (handed out to the Board) that explained the fundamentals of sound, the A- and C-weighted scales and the day/night levels (DNL).

Application Requirements – Item 9p – Wedel said that wording regarding the impact of shadow flicker was added.

SITING AND PERFORMANCE GUIDELINES

As Jim Eisen had asked that the wording "Because they are guidelines and not standards, they are designed to be advisory in nature rather than requirements" be reinserted.

Wedel suggested Eisen explain the reasons for adding it.

Eisen said it is understood coming into a project that the guidelines are not requirements. He asked that it be added just to assure that it is understood that they are not requirements.

Dick Seaton said this wording was in the regulations at one time and the Board decided to remove it.

Lorn Clement felt that putting the wording back in makes it clear that that guidelines don't really mean anything.

Seaton said that he understood the intent was to require the Planning Board and the Commission to consider these guidelines but not be bound to the guidelines as requirements.

Lorn Clement read an e-mail received from Tom Power (an economist) regarding the need to protect the natural amenities of an area for long term economic vitality. Clement suggested that the Board should possibly do an update to the Comprehensive Plan before going any further with writing the wind energy regulations. Clement also suggested zoning certain parts of the County that would allow wind turbines and preclude them in other areas.

Buck Gehrt stated that wind turbines have not hurt the Palm Springs area as far as tourism.

Kitty Pursley stated that she has seen the wind turbines in New Mexico and Palm Springs. She felt they would be eyesores along I-70 or on the corridor into Manhattan. She stated that she is pro-land use, ownership and energy efficiency, but also felt that the Board should be cautious about allowing wind turbines just anywhere in the County. She thought the Board should research the subject thoroughly before adopting any regulations.

Chairman Larson felt the Board has waited too long to do a complete Comprehensive Plan update before writing wind regulations.

Darlene Wilds asked why the Board feels they must make an immediate decision on writing the regulations.

Larson said a decision is not being made on a particular request at this time. Larson stated that Orion has come to the County with a potential application and the County does not have adequate regulations in place to accept the application. He added that the County needs to write regulations in order to accept an application.

Wedel said the County must adopt regulations regardless of a Comprehensive Plan update. He said that it might be possible to conduct a study to identify the specific areas within the County

where wind energy systems should locate. He did not know how this would be accomplished.

Martha Seaton suggested that the guidelines could generally apply to the entire County, but with specific requirements for scenic areas of the County.

Wedel said that the Riverside County (Palm Springs) ordinances had certain zones in the County where the wind turbines would be prohibited.

Dick Seaton said the current objectives of the Comprehensive Plan is to concentrate industrial uses, keep them out of agricultural areas and to protect tall grass prairies. He said that he wondered if much modification would be needed to the Comprehensive Plan.

Wayne Hoffman wanted to reiterate that the County is under a moratorium at this time and that one of the reasons why Orion is looking at Riley County instead of western Kansas is because of the existing transmission lines. He also pointed out that half of the power that Kansas uses is being imported and being produced from coal. He further explained that Orion is considering the British Pasture for their project location due to the fact that the area has already been impacted by roads from oil wells, local REA lines, 345 lines, 115 lines, houses and private roads. He felt that small and medium ranches could survive from the opportunity to have wind turbines on their property. If the small/medium ranches go under, the tall grass prairie will become filled with houses and ranchettes.

Becky Mosier wanted to clarify that the energy created in Riley County will not stay in Riley County, which will not help the importation of power into Kansas.

Latane Donelin has been involved with the National Renewable Energy Lab in Golden, Colorado. Her understanding was that it was necessary to obtain a year's worth of data to make any assessments and wondered if Orion had done so.

Wayne Hoffman stated that they have had an anemometer in the area since October 2002.

Lorn Clement suggested that in order for the Planning Board to get more information, they should ask the County Commission for an extension on the moratorium.

Chairman Larson felt it was too early to need an extension.

Clement said that the Board needs to wait for a recommendation from the Wind Energy Task Force that is supposed to be available at the end of May.

Rose Bacon said the Governor wants to develop wind power in appropriate areas in the entire State and, at the same time, preserve the Flint Hills and grasslands.

Dick Seaton suggested only writing regulations for non-commercial wind energy systems and prohibit anything over 150'.

Tom White discussed an article in the Cape Cod Times regarding someone who had went to

Denmark to study wind farms. He added that the only argument against wind farms is the view.

Stan Morgan consulted with Wedel and suggested the Board review their options again. He said that the Board needs to decide tonight whether to look at prohibition or go in some other direction.

Wedel said the Board needs to agree on a direction to take.

Buck Gehrt moved to table the topic and give the Board a chance to step back and take a look at the wind farms. He also stated that the past few meetings have been against wind farms. He added that he would like to hold a meeting on the pros of wind farms.

Becky Mosier said the County Commission wanted education regarding this topic. She felt the Board is doing a good job getting educated and attempting to write regulations. She wanted to keep working on writing the regulations and see where the Board is at in April. Mosier said it was very upsetting to her that the Board had voted last month to remove something from the draft regulations only to have the same information re-inserted by a company directly involved in an application, without first consulting the Planning Board.

Wedel stated that in light of Becky Mosier's comments, from here on, he would re-draft certain sections and would then present to the Planning Board. If Orion desires additional changes, they will need to present those ideas directly to the Planning Board at the public discussion.

Tom Taul said he wants some black/white guidelines so that definite decisions can be made when an application is submitted. The guidelines need to apply to the entire County. He agreed that it seems like the Board is writing a set of guidelines with Orion's guidance for their proposed project, not the entire County.

Wedel said that the Board cannot keep extending the moratorium indefinitely. The regulations need to get written. He stated that at whatever point the Board ends up in the regulations tonight, the draft will be presented to the County Commission to inform them as to progress of the Planning Board. He stated that he will notify the Planning Board as to when he has the draft scheduled so they can attend the Commission meeting and state their concerns.

Kent Bacon felt that the land would be changed from agricultural land to commercial and regulations definitely need written to control this.

Visual Impacts – Item 9 – Wedel stated that this item was moved into the guidelines section from the standards section.

Clement stated that he had a problem with the wording "wherever practicable".

Wedel said if an applicant comes in with a proposal to not bury the lines, the Board can deny the application.

Chairman Larson questioned whether the Board could enforce strict guidelines.

Martha Seaton asked how the voltage in Item 9 (34,500 volts) was arrived at.

Wedel responded that it is the voltage needed inside the project, not the voltage needed to transfer the energy out of the project.

Lorn Clement moved to suggest to the Commission, the need to update the Comprehensive Plan in tandem with writing wind regulations. The motion failed due to lack of a second.

Becky Mosier stated that the Board needs to focus on one thing at a time, whether it be the Comprehensive Plan or writing the regulations.

UPDATE - JOINT LAND USE STUDY (JLUS)

Monty Wedel gave the update on the Joint Land Use Study. He stated that the proposals from consulting firms were due today and that seven (7) proposals have been received.

UPDATE - RILEY COUNTY COMPREHENSIVE PLAN

Mr. Wedel said the staff had nothing further on this subject due to the work on the wind farm regulations.

MISCELLANEOUS

Tom Taul asked if he could receive an updated set of the proposed wind regulations. Wedel said the Planning Board could throw out everything they have to date and he will provide a new set at the next meeting.

Wedel reminded the Board of the Land Use Law meeting on Thursday, February 12, 2004 from 1:00 – 5:00 in the Commission Meeting Room.

The meeting was adjourned at 10:00 pm.